

Court of Appeals, State of Michigan

ORDER

People of MI v Daryle Anthony Stewart

Docket No. 259358

LC No. 90-003165

Alton T. Davis
Presiding Judge

E. Thomas Fitzgerald

Jessica R. Cooper
Judges

The Court orders that defendant shall be afforded a direct appeal of his convictions and sentences in LC No. 90-003165. Defendant's retained appellate counsel, Sequoia DuBose, abandoned appellate representation of defendant when, after untimely filing a claim of appeal from defendant's convictions, he failed to pursue an application for leave to appeal, resulting in its dismissal. DuBose provided ineffective assistance of counsel that deprived defendant of his right to appeal by not timely filing the claim of appeal, and then abandoning a second chance for defendant to appeal his convictions in the form of a delayed application for leave to appeal. *Roe v Flores-Ortega*, 528 US 470, 477-478, 483-484; 120 S Ct 1029; 145 L Ed 2d 985 (2000). The trial court's repeated denials of defendant's several subsequent requests for the assistance of counsel to pursue appellate review of his convictions amounted to an ongoing deprivation of his right to appeal and to the effective assistance of appellate counsel. Because the ongoing deprivation of defendant's right to appeal and his right to the effective assistance of appellate counsel constitutes a structural error, defendant is entitled to a direct appeal of his convictions. *Id.* at 483; *People v Willing*, 267 Mich App 208, 224; ___ NW2d ___ (2005). Subchapter 6.500 of the Michigan Court Rules does not govern this Court's review of the trial court's denials of defendant's 1995 and 2002 motions for relief from judgment. *People v McSwain*, 259 Mich App 654, 678; 676 NW2d 236 (2003).

On its own motion, the Court orders that defendant's appeal is to be EXPEDITED. The appellant's brief is due no later than 35 days from the Clerk's certification of this order. The appellee's brief is due no later than 21 days after service of the appellant's brief. No extensions of time will be allowed for filing of the briefs except by order of this Court.

The Clerk of the Court is directed to place the appeal on the next available case call after the time to file appellee's brief has expired.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

NOV 9 2005
Date

Sandra Schultz Mengel
Chief Clerk